

DISTRICT COURT OF THE VIRGIN ISLANDS

DIVISION OF ST. THOMAS

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LAWRENCE CARTY, ET AL,

PLAINTIFFS,

CIVIL ACTION NUMBER:

-vs-

94-78

JOHN DEJONGH, ET AL,

DEFENDANTS.

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ORAL ARGUMENT VIA TELEPHONIC COMMUNICATIONS

DATE: APRIL 29, 2009

COURT REPORTER LOCATED AT:

MITCHELL H. COHEN UNITED STATES COURTHOUSE

ONE JOHN F. GERRY PLAZA,

CAMDEN, NEW JERSEY, 08101

**B E F O R E:**

THE HONORABLE STANLEY S. BROTMAN, UNITED STATES DISTRICT  
COURT, DISTRICT OF NEW JERSEY, ASSIGNED TO THE UNITED  
STATES VIRGIN ISLANDS

**A P P E A R A N C E S:**

ERIC BALABAN, ESQUIRE

AND

BENJAMIN A. CURRENCE, ESQUIRE

ATTORNEYS FOR THE PLAINTIFFS

WARREN WILLIAMS, ESQUIRE,

ASSISTANT ATTORNEY GENERAL

ATTORNEY FOR THE DEFENDANTS

STEPHEN J. DANER, CCR, RPR,

OFFICIAL COURT REPORTER

UNITED STATES DISTRICT COURT

1 (The following takes place via telephonic communications  
2 from the chambers of the Honorable Stanley S. Brotman,  
3 United States District Court, District of New Jersey,  
4 designated to the United States Virgin Islands, on  
5 Wednesday, April 29, 2009)

6 THE COURT: Hello. Good morning.

7 Who is on the call so far?

8 MR. WILLIAMS: Warren Williams, from the  
9 Department of Justice, Your Honor.

10 THE COURT: Yes. We understand you are to be on  
11 the call, today.

12 Where is Mr. Schrader?

13 MR. WILLIAMS: No, Your Honor, not that I know,  
14 Your Honor. I do not believe so.

15 THE COURT: Let me ask is the court reporter on?

16 THE COURT REPORTER: Yes, Your Honor.

17 THE COURT: Mr. Balaban?

18 MR. BALABAN: Yes, Your Honor, I'm here.

19 THE COURT: Everybody is -- Angelia, are you  
20 there?

21 LAW CLERK: I'm here.

22 THE COURT: All right.

23 MR. CURRENCE: Ben Currence, lurking in the  
24 background.

25 THE COURT: And Ben Currence, not lurking. You

1 are making yourself very visible by saying you are there.

2 Mr. Williams, are you acquainted with this  
3 matter?

4 MR. WILLIAMS: Vaguely, Your Honor.

5 THE COURT: Hello.

6 MR. WILLIAMS: Vaguely, Your Honor. I'm aware of  
7 this Court case, been involved in it once or twice before,  
8 and was asked yesterday afternoon to call in and be on  
9 this case.

10 THE COURT: Well, we're proceeding as though you  
11 are acquainted with it. It's the problem of the Attorney  
12 General's Office here. We have tried to make this call a  
13 week ago. We are advised that Mr. Schrader was ill. I  
14 can understand that happening. We also -- I think I was  
15 informed that he had some sort of a back problem; is that  
16 so?

17 MR. WILLIAMS: I'm not aware why Attorney  
18 Schrader is unavailable, Your Honor, so I really cannot  
19 tell you why. I just was told yesterday afternoon to be  
20 --

21 THE COURT: Who told you that?

22 MR. WILLIAMS: Carol Thomas, the Chief of Civil,  
23 Your Honor.

24 THE COURT: Now, so that the record will be  
25 complete at this point, I tried to reach Mr. Schrader

1 myself last week on several calls. First couple days I  
2 got no response from his office. The secretary apparently  
3 was away. I got her when she got back and I -- before I  
4 even got her I left messages on Mr. Schrader's phone, on  
5 his voicemail, advising him to, at least I recognized he  
6 was out ill, but I had to have a response to when we're  
7 going to reset this motion, that it could not be heard  
8 last Monday, a week ago, last Monday.

9 Now he never responded.

10 As a result, this Court contacted the Chief of  
11 the Litigation and made her acquainted with the problem  
12 and thus I assume your assignment.

13 All right, Mr. Balaban, let's proceed.

14 MR. BALABAN: Your Honor, there were several  
15 issues for the Court to resolve.

16 The first, most pressing, is the defense failure  
17 to abide by the Court's scheduling order. The provision  
18 at issue that is subject to the defendant's motion to  
19 exclude evidence requires them to file a response noting  
20 their disputes or any remedial efforts rendering no longer  
21 accurate, the findings of the experts, Doctor Metzner and  
22 Mr. Martin, whose reports have been filed with this Court.

23 Just to review the bidding, on April 17th, the  
24 plaintiff filed their motion to exclude evidence based on  
25 defendant's disobedience of that provision of the Court's

1 scheduling order. To date, the defendants haven't filed a  
2 response.

3 I briefly want to review the facts that are  
4 essential to the Court's resolution of the plaintiff's  
5 motion.

6 On March 13th, the Court entered a scheduling  
7 order sitting deadlines for the parties preparation for  
8 the May 28th hearing in this case.

9 At issue at the hearing is the defendant's  
10 motion to terminate settlement agreement. Plaintiff's  
11 opposed termination and filed the aforementioned expert  
12 reports in support of their opposition. The reports  
13 document a pattern of abuses and unconstitutional  
14 conditions, systemic problems at the CJC and CJC Annex,  
15 and within the Bureau of Corrections that threaten the  
16 lives and safety of prisoners and staff.

17 Among the more notable findings are the  
18 following:

19 The defendants failed to protect prisoners from  
20 harm from fellow prisoners by appropriately classifying  
21 and housing them;

22 The defendants don't maintain an adequate or  
23 sufficiently trained staff to carry out basic security  
24 functions at the jail;

25 They failed to institute and maintain

1 appropriate securities system and procedures and essential  
2 systems such as door control panels remain inoperable and  
3 unreliable as this Court has noted on several occasions in  
4 the past few years, and found defendants in contempt based  
5 upon its findings.

6 The defendants also have failed to implement a  
7 reliable disciplinary system, and as a result, prisoners  
8 are denied the most basic aspects of due process,  
9 including a right to notice of the rules they violated, a  
10 right to a hearing, a right to appeal disciplinary  
11 actions, contraband, including weapons, phones, and drugs  
12 readily available throughout the jail.

13 The jail has not instituted a system to prevent  
14 contraband from entering the facilities, or for  
15 investigating how contraband gets to prisoners either from  
16 staff, family members, or otherwise.

17 Prisoner lives also been subjected to excessive  
18 and unnecessary uses of force, and have been improperly  
19 restrained at the jail.

20 The jail doesn't have a reliable system in place  
21 to investigate use of force incidents, and to discipline  
22 staff where appropriate. And staff has not, is not  
23 trained in the use of force techniques.

24 Regarding Doctor Metzner's findings, they echo  
25 the finding he has made on the three previous tours.

1       These are findings that were the basis for the Court  
2       holding the defendants in contempt in February, 2007.

3               To sum up, the defendants still do not have a  
4       reliable health care system. They failed to implement a  
5       comprehensive set of health care policies and procedures  
6       consist with accepted medical practices. Seriously  
7       mentally ill prisoners are not adequately treated, nor  
8       adequately housed. As a result, their serious health care  
9       needs are disregarded, resulting in unnecessary suffering.

10              The Court, in setting a tight discovery schedule  
11       in the scheduling order acknowledged the serious issues  
12       raised by their experts, and that by virtue of the  
13       automatic stay provision of the Prison Litigation Reform  
14       Act, plaintiffs currently are denied even the most basic  
15       protections that are provided in the agreement.

16              When the Court entered the order, it admonished  
17       both parties to abide by the deadlines, and the Court  
18       noted that the defendant's previous disobedience of Court  
19       orders, and stated, quite frankly and plainly, that it  
20       would not tolerate there be disobedience of this order.

21              Again, the one provision at issue, that Your  
22       Honor required defendants, was by April 7th to identify  
23       with specificity each finding and opinion of Doctor  
24       Metzner's and Mr. Martin's reports that they disputed or  
25       claimed no longer be accurate due to their own remedial



1 efforts. And, for each finding and opinion they dispute  
2 or claim was inaccurate, defendants had to identify all  
3 persons with relevant knowledge, and produce all documents  
4 establishing the basis for defendant's dispute or  
5 inaccuracy.

6 The defendant simply ignored the scheduling  
7 order. They didn't ask this Court to reconsider the order  
8 and extend the deadline. Rather, on April 7th, they filed  
9 a document entitled a response, where they simply declared  
10 that they will file on May 15th a comprehensive progress  
11 report detailing their remedial efforts.

12 That would be more than a month later, and less  
13 than two weeks before the scheduled hearing in this case.

14 The defendants didn't seek the Court's leave.  
15 They didn't offer any reason or explanation for why they  
16 were disobeying the Court's deadline. They simply  
17 aggregated to themselves the power to amend the Court's  
18 order, to set a deadline almost six weeks later, and  
19 simply told the Court that when they intended to file.

20 Your Honor, Third Circuit has been consistent  
21 that scheduling orders lie at the heart of case management  
22 and should never be flouted. Again, quoting from a case,  
23 Turner versus Schering Plough, 901 F.2nd, 335, which is a  
24 Third Circuit case cited in our brief, the reason for this  
25 is simple. Scheduling orders are designed to offer a

1 degree of certainty in pre-trial proceedings insuring that  
2 at some point the parties and the pleadings will be fixed,  
3 and the case will proceed, unquote.

4 The Third Circuit has, the Third Circuit has not  
5 hesitated to exclude evidence based on party disobedience  
6 of scheduling orders far less egregious than the  
7 defendants, here.

8 THE COURT: I noticed in the file there was a  
9 motion to amend the scheduling order by Schrader, Mr.  
10 Schrader, dated April 16th, 2009.

11 Did you get that?

12 MR. BALABAN: Yes, Your Honor. I can address  
13 that, now.

14 You are correct that there was a one page motion  
15 filed 10 days after the deadline on April 16th. This was  
16 filed a day after I spoke with Mr. Schrader in an effort  
17 to resolve this matter. And after that, we were unable to  
18 resolve it, I said to Mr. Schrader, that we were going to  
19 file a motion to exclude evidence because the defendants  
20 had, did not have the authority to simply set their own  
21 deadline and failed to ask the Court to amend the  
22 deadline.

23 The next day the defendants filed their one page  
24 motion to amend.

25 There is a standard for asking for a motion to

1 amend. It should be done before the deadline applicable,  
2 and it must demonstrate good cause under Rule 16 of the  
3 Federal Rules of Civil Procedure.

4 That means they have to show that the deadlines  
5 could not be met despite their diligence. That's quoting  
6 from the case of Globespanivarent, which is cited in our  
7 brief, Your Honor.

8 Nowhere in defendant's motion to amend did they  
9 demonstrate good cause. Nowhere do they state that  
10 despite their diligence they could not comply with the  
11 order. They simply state that the Court should amend the  
12 order because that would serve the interests of both  
13 parties because they're fixing the problems.

14 Again, Your Honor, it hardly meets the  
15 standards, and was a post-hoc motion filed within a day  
16 after we stated that we would be seeking to exclude  
17 evidence.

18 If I could return to the standard that the Third  
19 Circuit has apply, Your Honor.

20 The Courts of this Circuit have considered four  
21 factors when deciding on the appropriate sanction  
22 disobeying scheduling and discovery orders.

23 The first is whether the violation disrupts the  
24 trial preparation process.

25 The second is whether the innocent party is

1 prejudiced at, if the evidence is admitted.

2 The third is whether the evidence of the -- the  
3 exclusion of the evidence is the only means to cure the  
4 prejudice short of postponing trial.

5 And, the fourth, is whether the disobedience was  
6 either unintentional or willful.

7 This is from the case of Meyers versus penny  
8 pack wood, again, a Third Circuit case cited in our brief.

9 Here, Your Honor, all the factors weigh heavily  
10 in favor of excluding the evidence.

11 First, the defendants undoubtedly have disrupted  
12 the trial preparation process by violating the scheduling  
13 order. In fact, that could be presumed that the  
14 scheduling order itself set deadlines for trial  
15 preparation. The defendants violated those deadlines,  
16 continue to violate them. So, clearly, the plaintiff's  
17 preparations for hearing had been disrupted pursuant to  
18 the scheduling order.

19 Second, is plaintiffs, again, undoubtedly are  
20 prejudiced if this Court permits defendants to submit the  
21 evidence they failed to disclose and rewards their  
22 disobedience.

23 In this context, the Third Circuit has held that  
24 prejudice does not mean, quote, irredeemable harm.  
25 Unquote. But rather, an impediment to, again, quote, a

1 parties ability to prepare effectively a full and complete  
2 trial strategy. Unquote.

3 That's from the case of Ware versus Rodale  
4 Press, 322 F.3rd, 218. A 2003 Third Circuit case.

5 In fact, the Court's of this Circuit have  
6 presumed prejudice where a party violates a scheduling  
7 order.

8 We refer the Court to Astrazeneca AB, Eastern  
9 District of Pennsylvania, a case from 2003, cited in our  
10 brief.

11 Here, Your Honor, the Court set a rigorous  
12 schedule under its March 13th order for preparation for  
13 the hearing scheduled to begin in less than a month. The  
14 April 7th deadline required the defendants to identify all  
15 disputes with plaintiff's experts, to identify all  
16 personnel with relevant knowledge, and produce all  
17 documents establishing the basis for their dispute or  
18 remedial efforts.

19 This evidence is absolutely central to our trial  
20 preparation since it would set the disputed issues for the  
21 hearing.

22 The April 7th deadline allowed plaintiffs enough  
23 time before the hearing to engage in written discovery, to  
24 propound interrogatories, and request for production,  
25 request for admission regarding the issues in our expert's

1 reports that the defendants disputed, to depose those  
2 personnel who defendants identified as having relevant  
3 information, to prepare cross-examinations of personnel,  
4 to prepare our own experts to be crossed on the, by  
5 defendant on the findings that the defendant disputes, and  
6 to allow our experts sufficient time to review documents  
7 and information regarding whatever remedial efforts the  
8 defendants made since their tours.

9 It also allowed plaintiffs to identify areas  
10 where we needed additional evidence whether by our own  
11 experts, by other witnesses, or through documents we could  
12 obtain through discovery.

13 This opportunity, Your Honor, has been lost. We  
14 don't have enough time to engage in meaningful discovery  
15 as described before the hearing which begins in less than  
16 a month. Even if --

17 THE COURT: The date of the hearing is what  
18 date, now?

19 MR. BALABAN: May 27th, Your Honor.

20 THE COURT: We allocated two days for that, I  
21 believe.

22 MR. BALABAN: Well, we have -- what we have, Your  
23 Honor, is, we were scheduled to go through into the  
24 following week. We have at least two days of testimony.  
25 I prepared -- the experts to be able to testify for at

1     least a day each. Doctor Metzner is prepared to testify  
2     May 28th, and Mr. Martin will be prepared to begin  
3     testifying the following Monday. I believe we have three  
4     total days, that at least set aside, and again, we don't  
5     we have any information from defendants so we don't know  
6     or have any idea of how much additional time we need.

7             THE CLERK: June 2nd, as well, or you don't  
8     know?

9             MR. BALABAN: I don't know. I don't know. Of  
10    course a lot of that might be resolved by the decision  
11    here, of course.

12            Just to returning to the prejudice, Your Honor.  
13    Clearly based upon the facts, we have been prejudiced in  
14    our ability to prepare effectively a full and complete  
15    trial strategy, which is a quote from the Ware case I  
16    cited earlier, the Third Circuit case which is the  
17    standard for prejudice, and clearly we meet and exceed  
18    that standard.

19            The third, the, short of dismissing defendant's  
20    motion to terminate with prejudice which this Court  
21    certainly has the power to order under Federal Rule 16 for  
22    violating its scheduling order, no sanctions other than  
23    exclusion will remedy the prejudice to plaintiffs. The  
24    only way, Your Honor, we can meaningfully respond to  
25    defendant's expert disputing our expert's findings, or on

1 the remedial efforts, is if this Court were to push back  
2 the hearing date. However, this Circuit, the Third  
3 Circuit has been very clear that the exclusion of evidence  
4 is warranted where the only other viable option to cure  
5 prejudice to the innocent party is to vacate a trial date  
6 to permit additional discovery. I recite the Ware case,  
7 again. I also cite the case of in re: TMI Litigation, 193  
8 F.3D, 721, which is also cited in our brief.

9 In fact, Courts of this Circuit has held that  
10 evidence should be excluded if -- (telephone rings)

11 THE COURT: Is it clear?

12 Proceed.

13 MR. BALABAN: Again, just to repeat the point,  
14 Courts of this Circuit repeatedly held evidence should be  
15 excluded if its admission necessarily would delay or  
16 disrupt trial. This is from the Meyers case cited  
17 earlier. One of the leading cases establishing the factors  
18 for the Court to consider.

19 The Courts of this Circuit following Meyers have  
20 excluded evidence even when there is no set trial date and  
21 the only prejudice to the innocent party would be to  
22 further extend the discovery period. In the case of  
23 Astrazeneca AB, the case we cited earlier, the Court  
24 excluded evidence even though, quoting from the case,  
25 permitting evidence would not disrupt the orderly and



1 efficient trial of this case because no trial date has  
2 been set. Unquote.

3 The Court there reasoned, again quoting from the  
4 case, to permit defendants to introduce the excluded  
5 evidence which defendants have offered no bona fide excuse  
6 for its dilatory conduct would be simply to ignore the  
7 pre-trial scheduling order and would cause the Court to  
8 extend pre-trial proceedings.

9 Here, Your Honor, the postponing the hearing  
10 date would post a far greater risk, and cause far greater  
11 damage to the plaintiffs than to the litigants in any of  
12 the cases we cited. That is because the defendants mere  
13 filing of the termination motion automatically stays the  
14 substantive relief found in the settlement agreement.

15 Therefore, at this time the plaintiffs are  
16 bereft of the protections of the agreement and remain so  
17 until the Court resolves the defendant's motion. That is  
18 why the Court set such a tight discovery schedule.

19 This is not just a theoretical exercise, Your  
20 Honor. The experts that we were ordered by the Court to  
21 have produce reports again outline a litany of systemic  
22 problems that endanger the lives of our clients.

23 In light of these findings, delaying the hearing  
24 dates to allow us to conduct additional discovery is  
25 untenable, and potentially hazardous; it will extend the

1     automatic stay of the agreement of release; it will delay  
2     the Court's decision on the termination motion; and, of  
3     course, will divert the Court's, the parties, and the  
4     Court's resources from solving these very serious issues  
5     as we continue to litigate the defendant's termination  
6     motion.

7             The fourth factor, Your Honor, for the Court to  
8     consider under Meyers, and cases of the Third Circuit, is  
9     whether the defendant's disobedience here was inadvertent  
10    or willful.

11            Here, again, there's really no question that the  
12    defendants acknowledged that they are not complying with  
13    the Court's deadline. They acknowledge in their April 7th  
14    response that they have not complied, and simply set their  
15    own deadline without asking leave of the Court until the  
16    plaintiffs raised the issue over a week later.

17            The defendants didn't make any effort to excuse  
18    or explain there disobedience, nor could they, Your Honor.  
19    Defendants have had the expert reports now for over a  
20    month. Even before they had the reports they were on  
21    notice of the experts findings since the experts at exit  
22    interviews and otherwise on the tours discussed their  
23    findings with the officials while on site.

24            You will recall at the hearing we held in this  
25    case on December 2nd the Warden discussed going over the

1 findings of Mr. Martin in particular who at that point was  
2 the only expert who had toured, and of discussing the  
3 findings with Mr. Martin. They have known of the findings  
4 for several months even before they received the report.

5 With regard to Doctor Metzner's report, for the  
6 most part his findings are almost identical to the  
7 findings in his previous reports that the defendants have  
8 had ready access to all personnel and documents that they  
9 would need in order to prepare a response, but failed to  
10 do so.

11 Your Honor, in this regard we would point the  
12 Court's attention to the case of Koplove versus Ford Motor  
13 Company, which is 795 F.2D, 15. Which is --

14 THE COURT: 795?

15 MR. BALABAN: A Third Circuit case in 1986, Your  
16 Honor. There, the Third Circuit upheld an exclusion order  
17 of an expert report that was filed about a month after a  
18 deadline in the scheduling order under circumstances  
19 eerily similar to the circumstances here.

20 The Court in that case, the Third Circuit found,  
21 quoting from the case, that the deadline for filing the  
22 reports of any trial expert had passed a month earlier  
23 with no expert having been identified by plaintiffs, and  
24 no motion for an extension having been sought before the  
25 deadline. Unquote.

1           The Third Circuit in upholding the exclusion of  
2       that report reasoned that plaintiffs had, again quoting  
3       from the case, an obligation to provide the Court with a  
4       record which affirmatively demonstrates with specificity  
5       diligent efforts on their part, and unusual circumstances  
6       which are frustrated their efforts. Unquote. To  
7       designate their expert report by the Court ordered  
8       deadline.

9           The Court in excluding the scheduling order  
10       concluded, again quoting from the case, to require less is  
11       to deprive trial Judges of the ability to effectively  
12       manage the cases on their overcrowded dockets. As Rule 16  
13       recognizes, scheduling orders are at the heart of case  
14       management. If they can be disregarded without a specific  
15       showing of good cause, their utility will be severely  
16       impaired. Unquote.

17          Here, too, the defendants have failed to comply  
18       with the scheduling order. They failed to seek extension  
19       as the Federal Rules require, until we notified them that  
20       we would file our motion to exclude evidence, and raise  
21       their failure to seek an extension as grounds for  
22       sanctions.

23          Rather than providing the Court with a, quoting  
24       from Koplove, record demonstrating diligent efforts to  
25       comply, and the quote, unusual circumstances, unquote,

1     which prevented their compliance, defendants simply  
2     announced they had extended the deadline by six weeks.  
3     Their disdain for the order, the Court's schedule order  
4     that lies at the heart of case management impairs this  
5     Court's ability to manage its docket and to resolve  
6     defendant's termination motion.

7             Your Honor, we would note that this is hardly  
8     the first time that defendants have disobeyed the Court's  
9     orders. Plaintiffs -- I went back through and looked at  
10    the docket in this case and found that over the past four  
11    years plaintiffs have been compelled no newer than six  
12    times to seek sanctions against the defendants for their  
13    ongoing and repeated violations of this Court's orders.  
14    This Court has held multiple hearings admonishing  
15    defendants to abide by its orders, and threatening the  
16    very sanctions, and imposing sanctions where appropriate.

17            In just the past two years, Your Honor, the  
18    Court was compelled to hold defendants in contempt of a  
19    discovery order due to their repeated disobedience. This  
20    was the February 7th, 2007, order ordering defendants in  
21    contempt, and in fact this Court has already excluded  
22    evidence in this case based upon the defendant's  
23    disobedience of a scheduling order.

24            The Court will recall that it held a hearing in  
25    November, 2007, where, regarding the appropriateness of

1 contempt sanctions and plaintiff's pending motion for the  
2 appointment of a receiver. At that hearing Doctor Metzner  
3 testified along with other personnel. There was a  
4 deadline set in the Court's scheduling order that was  
5 entered before that hearing requiring defendants to  
6 identify all witnesses by a date certain. Defendants  
7 failed to produce a witness list until shortly before  
8 trial where they identified a Doctor Millen, and the  
9 plaintiffs then opposed Doctor Millen's testimony. The  
10 Court will recall that before the hearing it held a  
11 hearing in chambers where it excluded Doctor Millen's  
12 testimony for failing to be compliant with the scheduling  
13 order.

14 This pattern of disobedience, Your Honor,  
15 supports the exclusion of evidence.

16 The Court, the Third Circuit in Ware cited  
17 missed multiple discovery deadlines in excluding evidence.

18 The Third Circuit in the TMI Litigation case,  
19 which we cited, also cited multiple violations of Court  
20 orders that all pointed to wilful disobedience.

21 Your Honor, we would suggest that in fact  
22 defendants' disobedience of the Court's March 13th  
23 scheduling order is perhaps their worst. Unlike the  
24 previous orders that they have disobeyed, the March 13th  
25 order was prompted by defendants own motion, and by that

1 motion, defendants are seeking to terminate the Court's  
2 supervision over a wide sloth of conditions and operations  
3 at the jail that are covered by the agreement. Defendants  
4 filed this motion despite the fact that they currently  
5 operate under two separate contempt orders in which this  
6 Court has documented how they're abiding disobedience of  
7 both the agreement and the Court's remedial orders  
8 endangers the lives and safety of Virgin Island prisoners  
9 by openly flouting the deadline. Defendants deny to the  
10 plaintiff the right to gather and present the very  
11 evidence that may preserve the agreement. And, their  
12 disobedience gives them a clear tactical advantage that  
13 otherwise cannot be cured for prosecuting the termination  
14 motion.

15 Based on all the facts, Your Honor, we believe  
16 we've reached a point where exclusion of evidence is the  
17 only remedy available to insure that the termination  
18 motion can be decided promptly. If the defendant wants to  
19 introduce evidence regarding their remedial efforts, they  
20 can otherwise do so. But to allow them to do so in the  
21 context of this termination motion would prejudice  
22 plaintiffs in a way that cannot be otherwise cured.

23 That's why we asked this Court to rule today and  
24 to grant their motion.

25 THE COURT: All right. Let's -- that's it?

1 MR. BALABAN: Yes, Your Honor.

2 THE COURT: Mr. Williams.

3 MR. WILLIAMS: Yes, Your Honor.

4 We are opposed to plaintiff's motion, Your  
5 Honor. We will ask the Court to allow the motion of,  
6 although according to plaintiff, that Attorney Schrader  
7 filed may have been out, may have been delayed.

8 The issues in this case, Your Honor, is, is very  
9 important to both the plaintiff and the defendant. We  
10 should be all be seeking the same end result in this case  
11 and --

12 THE COURT: I said that all along, all those  
13 years, but that does not in any way say you can disregard  
14 the rules and the regulations, and this is what's happened  
15 here.

16 MR. WILLIAMS: I agree with Your Honor.

17 THE COURT: I hear what's you're saying, but  
18 it's not going to happen the way you want it.

19 MR. WILLIAMS: Well --

20 THE COURT: I don't mean to cut off your  
21 arguments. You can argue, but you will have to do a lot  
22 of argument.

23 MR. WILLIAMS: Well, Your Honor, I have heard  
24 what you said, and again, there's no question as to the  
25 length of time this case has gone on. There have been



1     many slips by the Government. We are now in the best  
2     position from the time these cases have been going on to  
3     remedy the deficiencies that may still exist in our  
4     system.

5             THE COURT: You know, enumerate for me what the  
6     -- where your position has changed, what the elements --  
7     what are you in a better position today than in the past  
8     14 years?

9             MR. WILLIAMS: Well, Your Honor, we have finally  
10    hired a person, a Director that is knowledgeable, have  
11    experience, and can bring to the job no politics, but  
12    truly the experience and education, ability that we needed  
13    from the top. To fix the problem, normally you have to  
14    come from the CEO, from the top, so we have done that. We  
15    have gotten him for the first time a knowledgeable  
16    assistant. Again, no politics. But who have the  
17    educational qualifications and experience, and we have  
18    started a major recruitment -- we are testing and bringing  
19    on more officers than we ever did in the past. I mean,  
20    these are positive steps that did not happen in the past.  
21    We have done, and presently making the best efforts that  
22    are needed to comply with any deficiencies that may exist.

23             THE COURT: You made the motion to terminate --

24             MR. WILLIAMS: Yes.

25             THE COURT: -- I would think maybe you ought to

1 think in light of what you're telling me, maybe you ought  
2 to think about withdrawing that motion because it  
3 indicates -- what you are telling me indicates the problem  
4 is working on, but it's not corrected the situation. You,  
5 by filing this motion to terminate have brought this  
6 matter to a head.

7 What is there, then, today, new, today? I lived  
8 with this thing for 14 years. I'm very knowledgeable. I  
9 have found the Governor, the various Governors in contempt  
10 four times, maybe five. I hear you talking, but talk I  
11 have learned is very cheap, because I have got a beautiful  
12 record replete with what you, the Government has said  
13 doing this and doing that, and it's never done. There are  
14 no results.

15 Go ahead, I'll hear you.

16 MR. WILLIAMS: Your Honor, again, I agree that in  
17 the past again we have not -- we may have made some miss  
18 steps. We presently feel that we put in place more or all  
19 that is necessary so that this litigation can be  
20 terminated. I believe that is why Attorney Schrader filed  
21 that motion.

22 Throughout the whole system we have made strides  
23 that we have never done before. And that is why he filed  
24 the present motion. It's unfortunate that he did not  
25 comply with I think it is your April 7th Rule 16

1 scheduling. However, again, I do not have the exact  
2 information, but I believe that to have made all efforts  
3 reasonably, diligently to meet the requirement of the  
4 Court, and because we have done that, we needed some  
5 additional time to respond to the plaintiff's expert's  
6 opinion, Attorney Schrader did file that motion, and the  
7 Government plans to abide by that motion we filed for the  
8 extended time and to provide to the plaintiff the names of  
9 the personnels that the plaintiff may need to know about,  
10 and any and all remedial efforts we have made to correct  
11 the problems in the jail.

12 I, I know that this Court have gone beyond what  
13 is or will be normally allowed. I was the Director of the  
14 Prison when Your Honor -- when Attorney General Cidron  
15 (ph), again give Governor Turnbull a chance to do the  
16 right thing. He did provide us with some monies to begin  
17 to make the corrections. But this particular Governor  
18 have given all of the funds. We are now able to do what,  
19 and this Director of Prisons can do what I can say when I  
20 was the Director, I did not have the funds nor the ability  
21 to do. That is -- again now talking from a personal  
22 prospective, that is the major difference. I can see from  
23 a personal view.

24 But, as the attorney for the Government now,  
25 Your Honor, I am asking this Court again, and we come in

1 asking this Court, and this Court have always said I'll  
2 give you another chance. I'm asking this Court I believe  
3 for the last chance. Give us the additional time to  
4 provide the appropriate response to the plaintiff expert  
5 information so that we can show this Court, truly  
6 demonstrate to this Court that all that this Court have  
7 allowed us in the past will now be fruitful. That's --  
8 you know, the Government's position on this, Your Honor.

9 THE COURT: Thank you very much.

10 Mr. Balaban, did you want to respond?

11 MR. BALABAN: Yes, Your Honor, I do.

12 It's breathtaking. I am sort of struck dumb in  
13 some ways by this argument.

14 Your Honor, this is a Court case. Defendants  
15 filed a motion to terminate. They again, as Your Honor  
16 found, set the wheels in motion to end the Court's  
17 supervision over a large part of this case. The Court  
18 entered a scheduling order, admonished the defendants  
19 based on their history of disobedience there would be  
20 consequences if they did not abide by it. And, they  
21 didn't. They failed to give any explanation. They failed  
22 to seek leave of the Court, as they have with regard -- I  
23 would note, Your Honor, there is a pending motion for  
24 reconsideration regarding another provision of the  
25 agreement that they are currently violating that they did

1 file on. They filed a one page post hoc motion to amend  
2 this scheduling order a day after I spoke with Mr.  
3 Schrader saying that you didn't file a motion and  
4 scheduling order and we'll seek sanctions. They filed a  
5 one page motion to amend, and didn't show due diligence.  
6 Doesn't even make a claim. It doesn't have any support  
7 stating what efforts they made to comply with the order.  
8 It has this boiler plate statement amending the order  
9 would promote judicial economy to conserve the parties  
10 resources, and narrow the issues. A completely  
11 self-serving document, Your Honor, with no factual  
12 support. It certainly would benefit defendants to be able  
13 to produce this evidence without giving the plaintiffs the  
14 opportunity to be able to conduct discovery, to conduct a  
15 valid cross-examination, to be able to present their side  
16 of the story. They're asking this Court to give them a  
17 free reign to be able to present this evidence without  
18 plaintiffs being able to meet their own burden, Your  
19 Honor, and order termination, here.

20 They have violated order after order, and there  
21 must be structure that is imposed here, Your Honor. We  
22 are not saying defendants cannot go ahead and do whatever  
23 remedial efforts they want to do. We have sincere and  
24 profound doubts that their remedial efforts have changed  
25 anything at the jail based upon the expert reports and

1 based upon their own review of conditions, Your Honor.

2 But, be that as it may, that's not the issue  
3 here, Your Honor. The issue here, is, they have violated  
4 the Court's order. Plaintiffs are clearly prejudiced in  
5 their ability to be able to defend the agreement by this  
6 disobedience. They clearly would be prejudiced if the  
7 Court were to allow defendants at this late date to  
8 produce this evidence despite there disobedience. There's  
9 no other way of curing this prejudice, Your Honor, other  
10 than excluding this evidence.

11 Defendants have a long pattern of willful  
12 disobedience that further supports this Court's excluding  
13 the evidence. So let the defendants go in and engage in  
14 their remedial efforts. We share the Court's concern that  
15 again this is nothing more than window dressing. But at a  
16 minimum, when the defendants produce that evidence, and  
17 there will be a time when defendants certainly can produce  
18 that evidence, they can produce the evidence in fact in  
19 support of their defense of not having contempt sanctions  
20 entered against them, which is a separate matter still  
21 pending before the Court.

22 With regard to the termination motion, Your  
23 Honor, the Court set deadlines and they violated them. We  
24 have been prejudiced, and the prejudice can only be cured  
25 by excluding the evidence.

1           The law of this Circuit fully supports the Court  
2     taking this step. In fact, the law of the Circuit fully  
3     supports dismissal with prejudice to their motion to  
4     terminate.

5           We want to have the opportunity to be able to at  
6     least make the arguments that there are current and  
7     ongoing violations, but we cannot be forced to have to  
8     deal with evidence we have no way of being able to prepare  
9     for.

10          We ask the Court to take this very reasonable  
11     step now to introduce some sanity back into the  
12     preparation for this case, and to uphold the Court's  
13     authorities to be able to enter orders and require the  
14     parties to abide by these orders.

15          THE COURT: Mr. Williams, do you want to have  
16     any response to that?

17          MR. WILLIAMS: Again, Your Honor, I would only  
18     respond by stating that we may have filed the motion for  
19     the extension late. However, we do believe that by the  
20     date that we requested we would be able to provide the  
21     information that the plaintiff need. If we had tried to  
22     reach the Court's deadline, the information may have been  
23     inadequate, and that would not have served the proper  
24     justice on either part.

25          Again, as I state, we are both in the same boat,

1     trying to head in the same direction, and I, I beg the  
2     Court that not to leave technicalities divert us from the  
3     course that we both should be seeking for the same  
4     shoreline we both should be seeking to go.

5             And, again, there's no doubt that we may have  
6     filed, Attorney Schrader may have filed the extension  
7     after the time limit, but it was done for a reason, and we  
8     didn't try to limit the plaintiff will receive the  
9     information that they need to receive, and we should be  
10    able to resolve this matter for the benefit of the  
11    prisoners, and for that reason I ask the Court to forgive  
12    the Government for any -- and I don't want to use the  
13    word, technicalities, because these rules are put in to  
14    make sure that litigation is done in the proper manner and  
15    people have enough time and not broad-sided. But I ask  
16    the Court to be lenient with the Government in this case  
17    and grant us time and do not grant the plaintiff's motion.

18            THE COURT: Well, I'll answer that.

19            First of all, the patience of the Court has been  
20    surely tested. I have had patience for 14 years. And,  
21    you know, it's a very long time that I have had promises  
22    and promises and promises, and they never come through.

23            Now also there's only one Judge to a case and  
24    that's the Judge in charge, and that's me. No lawyer can  
25    go ahead and just flagrantly, flagrantly ignore the



1 deadlines. These deadlines were argued and everything  
2 else before the Court approved those deadlines. Now  
3 that's the system. If those deadlines aren't enforced and  
4 the time requirements aren't enforced, the system falls  
5 down, too.

6 Now I don't know what I'm going to do yet.  
7 Regardless of what I do, that doesn't stop you from going  
8 ahead and doing what remedial processes you think have to  
9 be done. We will have a trial on that. It will be up to  
10 whoever I decide has the burden of proof to show the case.  
11 But certainly this is a very bad foot to get off.  
12 Remember, the Government filed the motion to terminate.  
13 That motion, if that motion wasn't filed things would have  
14 gone on, you would have had the benefit of the experts  
15 produced by the plaintiff, which you would have never  
16 gotten.

17 The plaintiffs have put into this case so much  
18 in terms of trying to lay down and give guidance on how a  
19 jail should be properly run to avoid the Constitutional  
20 violations. And everybody just blinked. It's the history  
21 of this case, and the history that will come out in the  
22 courtroom. I assume that will be.

23 But you are the ones who brought this by filing  
24 the motion to terminate. Had you not filed the motion,  
25 things would have gone on. I would have heard things, and

1 we would make our inspections. You say a new man has come  
2 in. I welcome the new man. He was in my courtroom. I  
3 was pleased to see it. Because -- maybe for the first  
4 time it had some stability. But that does not in any way  
5 exclude, excuse the failure that you went ahead and filed  
6 that motion to terminate. You created it. To go ahead  
7 and your failure to comply to a schedule which, sure, was  
8 tight, but we had to have those deadlines.

9           Anyway, I thank you very much.

10          Anyone else have any more to say?

11          MR. BALABAN: Your Honor --

12          THE COURT: Yes.

13          MR. BALABAN: There were some other issues that  
14 we would like to raise.

15               First off to the, as to the motion pending, we  
16 would ask that the Court issue a prompt decision on  
17 because it's impossible for us to prepare -- but we are  
18 going to need, I think both parties would need some  
19 certainty with regard to what evidence can be presented at  
20 the hearing, so we would ask for a prompt ruling on that.  
21 I'm sure defendants would want a prompt ruling as well.

22               Your Honor, there were three other issues that  
23 were discussed with defendants that we would like to  
24 raise, if we could do so, now?

25          THE COURT: Go ahead.

1           MR. BALABAN: The second issue is the defendant's  
2 failure to produce documents responsive to the requests  
3 made by Doctor Metzner before, and shortly after his  
4 expert tour. We did speak with Mr. Schrader about this.  
5 We sent letters to Mr. Schrader that were forwarded to the  
6 Court. Doctor Metzner conducted a tour in early February.  
7 He submitted through counsel a set of document requests  
8 and information requests to defendants on January 13th,  
9 2009, over three months ago. He also, he asked to review  
10 the documents before his tour. He didn't receive them,  
11 nor did he receive them after his tour.

12           Following his tour, based upon his review, he  
13 made a request for some additional documents and  
14 information on February 23rd, 2009. Again, those two  
15 letters from counsel were previously submitted to the  
16 Court.

17           As to that request, also, plaintiff have not  
18 received any response.

19           The only response that we have gotten from the  
20 defendant is a series of broken promises. We were told we  
21 would get the January 13th documents during Doctor  
22 Metzner's tour. We did not. We were then told we would  
23 receive them shortly after the tour. We did not. We were  
24 also told we would receive those documents on April 8th.  
25 We didn't get the. And we were told we would get -- I was

1 told I would get them last week during my tour, and I  
2 haven't received a single document.

3 We would ask the Court to enter an order at this  
4 point that the documents be produced by the end of this  
5 week. We simply can no longer wait.

6 THE COURT: You prepare the order.

7 MR. BALABAN: Thank you.

8 THE COURT: You got it.

9 MR. BALABAN: Your Honor, the --

10 THE COURT: Mr. Williams, do you object to that?

11 MR. WILLIAMS: No, Your Honor.

12 THE COURT: All right.

13 Next.

14 MR. BALABAN: Your Honor, the third issue, Your  
15 Honor, we haven't gotten a monthly report in over two  
16 years. I presume the Court hadn't gotten it in over  
17 two years.

18 THE COURT: I raised that at the various  
19 hearings.

20 MR. BALABAN: Yes. Its been raised at various  
21 hearings. But, Your Honor, the simply fact is, it hadn't  
22 happened. It's made it almost impossible for us to carry  
23 out our monitoring responsibilities.

24 Again, we would ask that there be an order  
25 entered that the reports be produced on the 8th of each

1 month. If not, defendants be required to notify the Court  
2 as to the reason, and that if defendants continue to fail  
3 to produce them, the Court will consider entering  
4 additional sanctions for each of the failures.

5 We also ask that all previous monthly reports  
6 not been produced, to be produced immediately. There are  
7 two orders on this already, Your Honor. We have reached a  
8 point of saturation. We simply need to have the Court  
9 intercede again.

10 THE COURT: Mr. Williams.

11 MR. WILLIAMS: Your Honor, although it does not  
12 seem like an unreasonable request because I am not aware  
13 as to why it was not produced, and I cannot at this point  
14 have any idea as to the previous reports -- we have the  
15 evidence or the information to produce it, I would request  
16 the Court, that we're not ordered to produce those within  
17 the next week because it may not have been prepared. May  
18 have been prepared -- we may not have those records  
19 available at this time. So I would request for the Court  
20 to at least gives us, give us, knowing the personnel that  
21 we have on staff and the effort these reports take, to  
22 give us at least four months to produce it.

23 THE COURT: Four months?

24 MR. WILLIAMS: Yes, Your Honor.

25 THE COURT: Now let me say something. In effect

1 I told the various Directors as they came along, you've  
2 got to get a computer system. At one time I even had my  
3 computer person from our District Court in the Virgin  
4 Islands to furnish the jail, your jail, with three  
5 computers that we contributed. I think a couple reports  
6 were computerized. After that, nothing happened. You  
7 never put a person on the job to put in the system, and I  
8 have talked about it time and time and time again. You  
9 have not -- it's not an answer. It's absolutely not an  
10 answer. I don't know what the answer is at this point.  
11 It's work required, but you should be doing that. I'm not  
12 going to reward you for your inability to do it. You were  
13 ordered by the Court to do it. You find the ability to do  
14 it. No one every came before me and said, look, we're not  
15 going to give you the particular reports because A, B, C,  
16 D, E, F, and G. I just couldn't understand that. And I  
17 thought about it. The record is replete with that. How  
18 do we know what's going on? I can't exceed to your  
19 request. I just can't do it.

20 Now you've got to move a lot of people around to  
21 get it done, but you have two weeks to get it done. You  
22 have 10, 20, 30 people on it. If were doing what you  
23 should have been doing all these months, you would have  
24 the information easily accessible. I want it in two  
25 weeks, and prepare that order, Mr. Balaban.

1 MR. BALABAN: Yes, Your Honor.

2 Finally, there is the, another one, other  
3 pending issue, pending pleading, and that is the  
4 defendant's motion for partial reconsideration of the  
5 Court's March 13th order. This was, again, a motion for  
6 reconsideration that was filed in a timely fashion, unlike  
7 their late filed motion to amend regarding the expert  
8 reports.

9 This is pleading number 588, record 588, which  
10 defendants requested the Court to vacate the portion of  
11 its March 13th order requiring them to identify with  
12 specificity portions of the expert reports and produce  
13 evidence in support thereof that they believe do not  
14 comply with the Prison Litigation Reform Act. That issue  
15 we believe is now ripe for decision.

16 We are repaired to present arguments on that,  
17 Your Honor.

18 The defendant's motion for reconsideration does  
19 not cite -- backing up, Your Honor, under the local rules  
20 which are applicable here, a motion for reconsideration  
21 can be granted if there has been either an intervening  
22 change in law, some new evidence that has become  
23 available, or based on the need to correct clearly error  
24 or manifest injustice.

25 THE COURT: What item was that?

1           MR. BALABAN: Record 588 is the defendant's  
2 motion, our position is 592.

3           The defendant failed to file a reply brief and  
4 time has passed. Defendants have made an argument that --  
5 they don't cite any intervening change in law. They  
6 didn't cite any new evidence. They seem to premise their  
7 request based upon the need to correct clear legal error  
8 or prevent injustice. But you will recall, Your Honor,  
9 their argument is that by requiring them to produce  
10 evidence that the Court has improperly placed upon them a  
11 burden of proof. This is precisely the argument Your  
12 Honor will recall, that the defendants made when the Court  
13 held a hearing on the scheduling order. The Court at that  
14 time, rightfully held, that the requirement to produce  
15 evidence is not a requirement regarding the burden of  
16 proof. That regardless which party had the burden of  
17 proof, that the plaintiffs would nevertheless be entitled  
18 to this evidence.

19           So this is an argument that defendants have  
20 simply rehashed in their motion for reconsideration, and  
21 they have cited no intervening change in law.

22           The Courts of the Third Circuit are quite clear  
23 that the motions for reconsideration are not vehicles for  
24 registering disagreement with a Court's initial decision  
25 or for rearguing matters already addressed by the Court.



1 That is a quote from the case of Bostic versus AT&T of the  
2 Virgin Islands, 312 F.2d, 731, from 2004. It's cited in  
3 our brief.

4 There is no basis, therefore, for this Court to  
5 reconsider that portion of its order.

6 We would also note, Your Honor, in addition  
7 that, defendants did not --

8 (Telephone rings)

9 THE COURT: Hold on --

10 MR. WILLIAMS: I'm sorry, another call was on my  
11 line.

12 THE COURT: Hello.

13 MR. WILLIAMS: Yes.

14 MR. BALABAN: I'm here, Your Honor.

15 THE COURT: Go ahead.

16 MR. BALABAN: Your Honor, we note that defendants  
17 have treated their motion for reconsideration as if it's  
18 self-executing. They didn't ask for a hearing before the  
19 deadline for them to produce this evidence. That deadline  
20 was in fact April 14th. They simply filed this motion,  
21 let it sit, and disobeyed the April 14th deadline.

22 Again, it's not the way litigation is supposed  
23 to work, Your Honor. A motion for reconsideration and  
24 motion for, to amend are not self-executing, but must be  
25 granted by the Court. However, defendants have failed to

1 produce the evidence ordered.

2 To sum up, Your Honor, the --

3 (Telephone rings)

4 THE COURT: Hello.

5 MR. BALABAN: Yes.

6 MR. WILLIAMS: I'm sorry, Your Honor, the call --

7 THE COURT: Shut off your phone.

8 Hello.

9 MR. BALABAN: Yes, Your Honor.

10 THE COURT: Yes.

11 MR. BALABAN: Just to conclude, there is no basis  
12 for this Court to reconsider the deadline. Defendants  
13 provided no basis --

14 (Telephone rings)

15 THE COURT: Hello.

16 MR. BALABAN: Yes, Your Honor.

17 THE COURT: Mr. William, are you still there?

18 MR. WILLIAMS: I'm still here, and I just  
19 informed the switchboard to make sure no calls come  
20 through to this number.

21 THE COURT: Thank you.

22 MR. BALABAN: Your Honor, again there's no basis  
23 under the local rule for the Court to reconsider its  
24 deadline. And, defendants, again, have completely flouted  
25 all practice by treating their motion for reconsideration

1 as if it were self-executing.

2 Plaintiffs are entitled to the evidence the  
3 Court ordered. They would be entitled if they had the  
4 initial burden for demonstrating current and ongoing  
5 violations or a rebuttal burden to demonstrate ongoing  
6 violations for those areas where the defendants have met  
7 their initial burden. The Court rightly decided that when  
8 it, before it entered the order on March 13th.

9 The Court should deny this motion for  
10 reconsideration as it should grant the motion --

11 (Telephone rings)

12 THE COURT: Hello.

13 MR. BALABAN: Yes, Your Honor. That's all  
14 plaintiffs have with regards to the argument as to the  
15 motion for reconsideration.

16 THE COURT: Mr. Williams.

17 MR. WILLIAMS: I'm still here, Your Honor.

18 THE COURT: Do you want to respond.

19 MR. WILLIAMS: Oh, Your Honor, I believe that  
20 our motion speaks for itself.

21 Unfortunately Attorney Schrader who prepared  
22 this motion and could properly respond to it is ill, and  
23 my response is just that I think the motion was filed --  
24 Attorney Schrader will not file motions frivolously. He  
25 would file motions that he feels defend the Government's

1 position and have the basis in law and fact, Your Honor.  
2 I will then ask the Court to deny plaintiff's request now  
3 and go forward with the motion filed by Attorney Schrader.

4 Again, I'm not familiar with the motion, but  
5 Attorney Schrader will not just file a motion just to file  
6 it, Your Honor.

7 THE COURT: Well, the thing is this, I have the  
8 papers before me.

9 Have you looked at these papers?

10 MR. WILLIAMS: No, Your Honor.

11 THE COURT: When is Mr. Shrader going back to  
12 his office?

13 MR. WILLIAMS: Your Honor, I, I, I cannot tell  
14 you. I can contact my Chief and I can call back the  
15 Court, but at this point, I do not know, Your Honor. I  
16 really do not know.

17 THE COURT: Will you do this, I, I have the  
18 papers before me and I have read the papers. I would like  
19 you to inquire of Mr. Shrader, does he stand on the papers  
20 or does he himself what oral argument. He can't be that  
21 sick he can't answer that question.

22 MR. WILLIAMS: Yes, Your Honor.

23 THE COURT: And then let me know.

24 MR. WILLIAMS: All right, Your Honor.

25 THE COURT: And I'll proceed accordingly as to

1       what you tell me.

2               MR. WILLIAMS: Yes, Your Honor.

3               THE COURT: I would like you also to find out --  
4       I don't know what his condition is, but I want you to  
5       tell me what his physical condition is or why he is unable  
6       to work, and also to let me know if he still is going to  
7       be out when -- if I determine to have oral argument when I  
8       can set oral argument -- when he will be back in the  
9       office.

10              MR. WILLIAMS: Yes, Your Honor.

11              THE COURT: Okay?

12              MR. WILLIAMS: Yes, Your Honor.

13              THE COURT: Mr. Balaban, anything further?

14              MR. BALABAN: No, Your Honor.

15              Again, I think we said what we had to say, and  
16       I'm sure the Court is aware that we have a hearing date in  
17       less than a month.

18              THE COURT: I understand it. It's on my mind.

19              MR. BALABAN: We appreciate the Court expediting  
20       the consideration and resolution of all these matters.

21              THE COURT: All right.

22              Let me -- the Court Reporter, will you make a  
23       transcript and as we have done before, you submit your  
24       charges to the, I guess the Attorney General, is that how  
25       it works, Mr. Balaban?

1 MR. BALABAN: That's how it works.

2 THE COURT: You share it, is that how it's done?

3 MR. BALABAN: No. It's been you order --

4 THE COURT: The Government has to pay it, right?

5 MR. BALABAN: Yes.

6 THE COURT: The bill is to be sent to the  
7 Government, but if the Court Reporter needs any help on  
8 that, as Court Reporters have done work in Camden and  
9 submitted the bills, and you can check with them.

10 Anything further today, gentlemen?

11 MR. WILLIAMS: Nothing on behalf of the  
12 Government, Your Honor.

13 MR. BALABAN: No, Your Honor.

14 THE COURT: All right.

15 THE CLERK: Attorney Williams, who, until  
16 Attorney Schrader returns, who will be reporting back?  
17 Will it be you or Attorney Jacobs? Who is the attorney in  
18 contact with --

19 MR. WILLIAMS: Well, at this point Attorney  
20 Jacobs is the head of the Civil Division. It will be her.  
21 She will then make a determination as to whether or not  
22 she will be handling it or someone else. But at this  
23 point I will answer that you continue to report to her and  
24 then she will make the determinations.

25 THE CLERK: Okay.

1           THE COURT: Okay. I want you to recognize --  
2       the Government to recognize that the Government by making  
3       its motion to terminate has set off a whole course of  
4       action here, and to keep that in mind.

5           MR. WILLIAMS: Yes, Your Honor.

6           THE COURT: Anything further?

7           We will stand in recess at this time.

8           MR. BALABAN: Thank you, Your Honor.

9           THE COURT: Thank you all very much. Have a  
10       good morning.

11       (At which time the matter was adjourned)

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C E R T I F I C A T E

I, Stephen J. Daner, C.C.R., Official United States Court Reporter and Certified Court Reporter of the State of New Jersey, do hereby certify that the foregoing is a true and accurate transcript of the testimony as taken stenographically by and before me at the time, place and on the date hereinbefore set forth.

I do further certify that I am neither a relative nor employee nor attorney nor counsel of any of the parties to this action, and that I am neither a relative nor employee of such attorney or counsel and that I am not financially interested in this action.

S/STEPHEN J. DANER  
STEPHEN J. DANER, C.C.R.  
Certificate No. 30X100151400  
Date: April 29, 2009



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